

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES GEORGE DOURIS,	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 99-3357
	:	
COUNTY OF BUCKS,	:	
MARIE COSTELLO, and	:	
SCOTT BROBST,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM

ROBERT F. KELLY, J.

JUNE 18, 2001

Plaintiff, James George Douris ("Mr. Douris"), originally brought this action against the County of Bucks, Marie Costello ("Remaining Defendants") and Scott Brobst ("Mr. Brobst"), alleging violations and retaliation under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. section 621, et seq., 42 U.S.C. section 1983, and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951, et seq. Before this Court is Mr. Douris's Motion for a Default Judgment Against Defendant Scott Brobst. For the reasons that follow, the Motion is denied.

I. PROCEDURAL BACKGROUND

The Court will only recite the relevant procedural background of this case. Mr. Douris filed his Complaint against the County of Bucks, Marie Costello and Scott Brobst on July 1,

1999. Mr. Douris's action is primarily based on the alleged failure of the County of Bucks to hire him as a Park Supervisor due to his disabilities, its alleged failure to accommodate Mr. Douris's disabilities by not allowing him to take home a job application, and a physical altercation and subsequent criminal charges stemming from Mr. Douris's attempt to take home the application.¹ On August 16, 1999, Mr. Brobst filed a Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).² Mr. Douris responded to Mr. Brobst's Motion to Dismiss on August 25, 1999. On February 14, 2000, by Memorandum and Order, the Honorable Herbert J. Hutton granted Mr. Brobst's Motion as to all counts against him, thereby completely dismissing Mr. Brobst from the action.

The case proceeded forward without Mr. Brobst. On April 12, 2000, a scheduling Order was entered. The Remaining Defendants filed a Motion on the Pleadings Pursuant to Federal Rule of Civil Procedure 12(c) on June 15, 2000. On June 27, 2000, Mr. Douris filed his Response to the Remaining Defendants'

¹ The County of Bucks has a policy that requires job applications to be completed on the premises.

² Mr. Brobst filed a second Motion to Dismiss on August 25, 1999. Douris v. Brobst, No. Civ. A. 99-3357, 2000 WL 199358, at *1 (E.D. Pa. Feb. 14, 2000). The second Motion to Dismiss was substantively identical to the first Motion. Id. Therefore, the Court ruled solely on the first Motion to Dismiss because of the similarity of the Motions and Mr. Douris's Response solely addressed the first Motion. Id.

Motion on the Pleadings. Within his omnibus Response, Mr. Douris requested leave of Court to Amend his Complaint. The Court granted Mr. Douris's request to amend his Complaint in its Memorandum dated July 14, 2000. Mr. Douris filed his first Amended Complaint on August 3, 2000.

Among the extensive filings between the Remaining Defendants and Mr. Douris, the Remaining Defendants filed a Motion to Dismiss Certain Counts of the Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) on August 21, 2000. Without receiving a ruling on their Motion to Dismiss, the Remaining Defendants filed a Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56 on October 30, 2000.³ On November 14, 2000, this case was reassigned from Judge Hutton to this Court.

This Court issued a new Discovery Order pertaining to Mr. Douris and the Remaining Defendants. On February 2, 2001, the Court denied the Remaining Defendants' Motion to Dismiss. On April 6, 2001, Mr. Douris filed the instant Motion for Default Judgment against Mr. Brobst. Mr. Brobst responded to the Motion on April 19, 2001. On April 23, 2001, Mr. Douris filed a Memorandum of Law in Reply to Mr. Brobst's Response to his Motion for Default Judgment. Subsequently, on May 5, 2001, Mr. Brobst filed a Supplemental Brief in Response to Mr. Douris's Motion.

³ Currently, the Motion is still pending before the Court.

The Court held a hearing regarding Mr. Douris's Motion for Default Judgment on June 5, 2001. At this hearing, the Court denied the Motion.

II. DISCUSSION

The crux of Mr. Douris's Motion for Default Judgment against Mr. Brobst arises from Judge Hutton's dismissal of Mr. Brobst from the action on February 14, 2000 and Mr. Douris's subsequently filed Amended Complaint on August 3, 2000.⁴ Although the Court's Memorandum and Order granting the dismissal of all claims against Mr. Brobst addressed the merits of the claims, it did not specify whether the dismissal was with or without prejudice. Mr. Brobst argues that entry of default judgment against him would be erroneous because he "believed in good faith that the Court's February 14, 2000 Order dismissed all claims against Officer Brobst with prejudice." (Def.'s Mem. L. Supp. Resp. Pl.'s Mot. Default J. at 4.) Mr. Brobst further argues that he was not included in the discovery or the prosecution of the case and that "all the parties in this law suit treated Officer Brobst as if he had been dismissed by the February 14, 2000 Order, granting his Motion to Dismiss."⁵

⁴ Although more detailed, the Amended Complaint alleges virtually the same claims against Mr. Brobst that had previously been dismissed by the Court. See Am. Compl.

⁵ Specifically, Mr. Brobst states that he was not provided with any copies of deposition notices, discovery requests, answers to the discovery requests, a copy of the Motion for

(Def.'s Supp. Br. Resp. Pl.'s Mot. Default J. at 2.)

Mr. Douris argues that he is entitled to a default judgment against Mr. Brobst because Mr. Brobst failed to respond to the Amended Complaint. (Pl.'s Mot. Default J. at 2.) Mr. Douris contends that he was granted leave to file an Amended Complaint against all Defendants and that he properly served and included Mr. Brobst in the Amended Complaint.⁶ (See Pl.'s Mem. L. Supp. Mot. Default J.) Basing his Motion for Default Judgment on the premise that his Amended Complaint reinstated Mr. Brobst as a defendant, Mr. Douris argues that Mr. Brobst's failure to answer or otherwise respond to the Amended Complaint entitles him to default judgment.⁷ (Id.)

A. The Court's February 14, 2000 Order

As discussed earlier, Judge Hutton's February 14, 2000

Summary Judgment, or Mr. Douris's Response to the Motion for Summary Judgment. (Def.'s Supp. Br. Resp. Pl.'s Mot. Default J. at 2.)

⁶ Although Mr. Douris contends that all Defendants were personally served copies of the Amended Complaint and summons, Mr. Brobst argues that he never received a copy of the Amended Complaint and was unaware of its existence until he requested a copy from the Remaining Defendants' counsel in order to respond to the present Motion for Default Judgment. (Def.'s Mem. L. Supp. Resp. Pl.'s Mot. Default J. at 3.)

⁷ On September 1, 2000, Mr. Douris sent a letter to Mr. Brobst stating that Mr. Brobst was in default status and that default judgment may be sought if the Amended Complaint remained unanswered. (Pl.'s Mot. Default J. at 1.) Mr. Brobst responded by letter, stating that he did not need to answer the Amended Complaint because he was previously dismissed from the case. (Id.)

Memorandum and Order addressed and dismissed all of Mr. Douris's claims against Mr. Brobst.⁸ Specifically, the Memorandum dismissed the ADA claims against Mr. Brobst in his individual capacity because the ADA does not impose individual liability. Douris v. Brobst, No. Civ. A. 99-3357, 2000 WL 199358, at *2 (E.D. Pa. Feb. 14, 2000). Mr. Douris's ADA claim against Mr. Brobst with regard to the use of public facilities was dismissed because the Court found that the claim was without merit since "[Mr.] Brobst was not involved in [Marie Costello's attempt to prevent Mr. Douris from removing an employment application from the County of Bucks Municipal Building] in any way and therefore cannot be liable for violating Douris's rights in the manner alleged." Id. at *3. Likewise, the Court dismissed Mr. Douris's ADA retaliation claim against Mr. Brobst, finding that Mr. Brobst's Equal Employment Opportunity Commission ("EEOC") charge did not put the EEOC on notice to initiate a retaliation

⁸ The Court's dismissal was based on Mr. Brobst's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). The purpose of a motion to dismiss for failure to state a claim is to test the legal sufficiency of the allegations contained in the complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). Under Federal Rule of Civil Procedure 12(b)(6), the court must determine whether the allegations contained in the complaint, construed in the light most favorable to the plaintiff, show a set of circumstances which, if true, would entitle the plaintiff to the relief she requests. FED. R. CIV. P. 12(b)(6); Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997) (citing Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)). A complaint will be dismissed only if the plaintiff could not prove any set of facts which would entitle him to relief. Nami, 82 F.3d at 65 (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

investigation against Mr. Brobst, and, therefore, Mr. Douris failed to exhaust his administrative remedies. Id. Lastly, without considering qualified immunity, the Court dismissed Mr. Douris's section 1983 claim against Mr. Brobst finding that "[Mr.] Douris's Complaint sets forth no facts which support his allegations that he suffered constitutional violations of his liberty interest, his equal protection rights, or substantive due process [Mr.] Brobst violated none of [Mr.] Douris's constitutional rights." Id. at *4.

B. Dismissal With or Without Prejudice

The Court's Order granted Mr. Brobst's Motion to Dismiss, but failed to state whether the dismissal was with or without prejudice. Id. at *5. Mr. Brobst believes that the Court's dismissal was with prejudice because the relief he sought in his Motion was dismissal of all claims with prejudice. (Def.'s Resp. Pl.'s Mot. Default J. at 1.) Conversely, Mr. Douris argues that the dismissal was without prejudice. (Pl.'s Mot. Default J. at 1.) Without providing the Court with any relevant statutory or case law, Mr. Douris relies on the assertion that "[a] dismissal under Federal Civil [P]rocedural Rule 12(b)(6)[sic] is a dismissal without prejudice." (Pl.'s Mem. Law Supp. Mot. Default J. at 2.) Confusingly, Mr. Douris argues that "[a]n order issued under Rule 12(b)(6), for failing to state a claim that relief cannot be granted, is a dismissal

without prejudice and will only be a dismissal with prejudice when it is stated in the Order that the dismissal is without prejudice." (Pl.'s Mot. Default Judgment at 2.)

The Court's dismissal of the claims against Mr. Brobst for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) was a final judgment on the merits. In this case, the Court's dismissal was a legal conclusion that addressed and dismissed all claims against Mr. Brobst on the merits. The United States Supreme Court ("Supreme Court") has declared that "[t]he dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a 'judgment on the merits.'" Federated Dep't Stores, Inc., v. Moitie, 452 U.S. 394, 399 n.3 (1981)(citing Angel v. Bullington, 330 U.S. 183, 190 (1947); Bell v. Hood, 327 U.S. 678 (1946)); see also Rosetti v. Shalala, 12 F.3d 1216, 1231 n.30 (3d Cir. 1993); Hubicki v. ACF Indus., Inc., 484 F.2d 519, 523 (3d Cir. 1973)(stating "a Rule 12(b)(6) motion raises matters in bar and results in a judgment on the merits.") The effect of a "final judgment on the merits of an action precludes the parties or their privities from relitigating issues that were or could have been raised in that action." Federated Dep't Stores, 452 U.S. at 398 (citing Comm'r v. Sunnen, 333 U.S. 591, 597 (1948)(citation omitted)).

Federal Rule of Civil Procedure 41(b), provides as follows:

Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

FED. R. CIV. P. 41(b)(emphasis added). Thus, "a dismissal with prejudice or even a dismissal without qualification under Rule 41(b) operates as an adjudication on the merits by the very words of the rule." Kuzma v. Bessemer & Lake Erie R.R., 259 F.2d 456, 457 (3d Cir. 1958). "Any dismissal of a case, with some exceptions . . . operates as an adjudication on the merits to bar further litigation between the parties." Benjamin v. Tomasso, No. Civ. A. 98-2659, 1998 WL 813422, at *2 (E.D. Pa. Nov. 24, 1998)(citing FED. R. CIV. P. 41(b); Napier v. Thirty or More Unidentified Fed. Agents, 855 F.2d 1080, 1087 (3d Cir. 1988)). In Semtek Intern'l Incorp. v. Lockheed Martin Corp., 121 S. Ct. 1021 (2001), the Supreme Court interpreted the language "operates as an adjudication upon the merits" in Rule 41(b) to connote that "an 'adjudication upon the merits' is the opposite of a 'dismissal without prejudice.'" Id. at 1026. Moreover, the Court of Appeals for the Third Circuit has "held that 'a dismissal of the first action with prejudice is a complete adjudication of the issues presented by the pleadings and bars

further action between the parties.'" Simmons III v. Anzon Inc., No. Civ. A. 94-0467, 1994 WL 317853 at *2 (E.D. Pa. June 21, 1994)(citing Freedman v. Am. Exp. Isbrandtsen Lines, Inc., 451 F.2d 157, 158 (3d Cir. 1971), cert. denied, 405 U.S. 992 (1972)). Therefore, "a judgment dismissing a previous suit 'with prejudice' is final and bars a subsequent suit on the same cause of action." Id. (citing Lawlor v. Nat'l Screen Servs Corp., 349 U.S. 322 (1955)).

Although the Court's February 14, 2000 Order did not specify whether it was with or without prejudice, the dismissal of Mr. Brobst from this action was with prejudice because, in accordance with Rule 41(b), the dismissal was a final judgment on the merits and did not pertain to the excepted subjects of jurisdiction, venue, or joinder. See FED. R. CIV. P. 41(b). As a result of Mr. Brobst's dismissal with prejudice, further litigation between Mr. Douris and Mr. Brobst was barred. Therefore, Mr. Douris's Amended Complaint did not re-instate Mr. Brobst in this action. Thus, Mr. Brobst's failure to plead or otherwise respond to Mr. Douris's Amended Complaint does not entitle Mr. Douris to a default judgment.

An appropriate Order follows.

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v.	:	No. 99-3357
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MARIE COSTELLO, and	:	
SCOTT BROBST,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 18th day of June, 2001, upon consideration of Plaintiff's Motion for Default Judgment (Dkt. No. 49), the Responses and Replies thereto, and after an in-court hearing on the Motion, it is hereby ORDERED that the Motion is DENIED because Defendant Scott Brobst was previously dismissed from the action with prejudice.

BY THE COURT:

Robert F. Kelly,	J.
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